GEORGETOWN UNIVERSITY
Center
on Education
and the Workforce

August 17, 2010

U.S. Department of Education
Attn: Jessica Finkel
1990 K Street, NW.
Room 8031
Washington, DC 20006-8502

Via www.regulations.gov

RE: Docket ID ED-2010-OPE-0012

On behalf of the Georgetown University Center on Education and the Workforce, I would like to thank the Department of Education for the opportunity to comment on the Notice of Proposed Rulemaking regarding gainful employment. The Center on Education and the Workforce supports the Department's efforts to define and regulate gainful employment in the interest of preserving healthy competition between an increasingly diverse array of occupational education and training providers. Our response to the proposed rulemaking is attached; we have both specific comments as well as general observations.

Please feel free to contact me should you have any questions, or if I can provide further details, clarification, or additional information. I can be reached at 202-687-4984 or via email at apc39@georgetown.edu.

Sincerely,

Anthony P. Carnevale
Director
Center on Education and the Workforce
Georgetown University

Specific Comments

I. The Department of Education's rationale for the proposed rule is reasonable.

Within the Higher Education Act of 1965, the Department of Education is given the authority and the fiduciary responsibility to disburse federal student financial aid. We agree that in discharging their responsibilities regarding federal student aid, the Department of Education needs to protect:

(a) the taxpayers' investment;
(b) the student from the serious consequences of unpaid student debt;
(c) consumers and taxpayers from the moral hazard of federal student aid being seen as a license for providing a sub-standard product; and
(d) the value of credentials in the labor market (discussed in section V below).

If programs choose to participate in the federal lending programs authorized by title IV of the Higher Education Act, the Higher Education Act is explicit that Department of Education is mandated to ensure that these institutions meet minimum standards, one of which is that a program must lead to gainful employment in a recognized occupation. The Department does not claim the authority to shut down programs or institutions, only to discontinue subsidizing programs with federal student aid that do not lead to gainful employment.

II. The current repayment rate calculation methodology can be improved upon.

Not everyone is familiar with the ins and outs of numerators and denominators, and many people assume that the relationship between the proposed rule's repayment rate and default rate is simple—that a repayment rate of 40% assumes a default rate is the inverse, or 60%. This is not the case with the Department's proposed repayment rate calculation. The consequences of including the entire loan value of those who are not paying down interest as not being in repayment creates the false impression that these loans will eventually default.

Program-level repayment rates are meant to identify programs that have a high likelihood of large numbers of their students defaulting. In order to rectify the potentially misleading impression that repayment rates have an obvious relationship to default rates and to improve upon the current calculation, we recommend explicitly examining the relationship between the repayment rate and the taxpayer exposure to potential default. We also believe that this approach allows greater flexibility, but not a free pass, to institutions that have many students repaying but not technically considered in the repayment category.

Currently in the proposed rule, the Department considers borrowers as being in one of four categories: (1) those who repay their loans quickly and in full; (2) those who, for whatever reason, make no repayments; (3) those who start repaying their loans by making a contribution that reduces the principal on the loan; and (4) those who start repaying their loans without making a contribution that reduces the principal on the loan, including those who have consolidated their loans and who are currently paying off the interest payments but are not decreasing their outstanding principal. For those in the

fourth group, even though these students may be meeting their legal obligations, and a large share will likely repay their loans, all of the balance on the original loans will be treated as in non-repayment in the proposed rule.

The first group has obviously repaid their loans while very few in the second group are likely to repay their loans. Predicting how the third and fourth groups repay in the future is the key to a repayment rate that successfully predicts default. In the proposed rule, all of the loans of the third group are considered in repayment (even if their principal payments are just a few dollars), while all of the loans in the fourth group are considered to be not in repayment. It is this final group that leads to many institutions having lower repayment rates than they had predicted under the current proposed rule.

While we agree it is extremely important to ensure that students intend to pay back their loans, the Department's current repayment measure assumes that those who are paying back only interest will default, while those who are paying even minimal principal will not.

Indeed, there is an alternative way to calculate the program level repayment rate that is a more accurate representation of how many students will *actually* repay their loans, which is also stringent enough so that schools cannot simply push their students into forbearance past the reporting date. We propose that the Department estimate the expected loan repayments of both groups three and four based on prior historical experience.

In the alternative approach, we suggest using average student default history by program to get an accurate repayment rate. This approach would allow the Department to use the actual default rates to predict whether repayers will eventually default or not. So, for example, if historically, people who pay down 8% of interest default at a rate of 25%, then those currently paying down 8% of interest would be assumed to have a repayment rate of 25% (as opposed to 0 under the current proposed rule). While this calculation is undoubtedly more burdensome to the Department, it is more lenient towards those who are in legal compliance with the terms of their loan.

For example, under the proposed rule, if a program has $100,000 of loans that have been repaid (group 1), $200,000 of loans that people are making no payments on (group 2), $300,000 of loans where students are making contributions covering the interest payments and some decline in the principal (group 3), and $400,000 of students making interest rate payments alone (group 4), the current proposed repayment rate of this institution would be 40% (i.e., the $100,000+$300,000, or $400,000/sum of all loans out, or $1,000,000).

However, using the alternative calculation, we would use the historical repayment of students in program A at institution B knowing that: 1) 85% of the loans were repaid by students who immediately began paying their principal in their first three years after graduation (group three), and 2) 60% of loans were repaid of students whose initial repayments were for the interest payments only (group four). Now the repayment would be $100,000 plus 85% of $300,000 and 60% of $400,000—or 55.5%.

In addition to the proposed methodological revision, we also suggest that the Department provide actual percentages of students in repayment/default, and not just the dollar amount.

We believe that this approach to calculating loan repayment, while still demanding, is a more accurate reflection of the taxpayer's exposure to loan losses from default and permits updating of the data based on the real experience of student repayment history.

III. The Department should be consistent in using 'earnings' or 'income.'

We request that in the final rule the Department clarify that they want a debt to *earnings* ratio and not a debt to *income* ratio (especially confusing is reference to the 'discretionary income' standard, when it is not truly referencing income, but all earnings above 150% of the federal poverty level). The two terms (earnings and income) are used interchangeably in the proposed rule. Income refers to all sources of income—be they federal programs such as TANF or Social Security, or income from other sources like assets—while earnings refers to the money being earned from employment.

IV. Critics of the Proposed Rule have made several claims.

Critics of the proposed rule have made several claims, which rest on the following dubious and/or unproven assumptions:

(a) Returns to education should be measured over a lifetime. This is a claim made by the for-profit sector in the paper by Charles Rivers Associates, commissioned by the Career College Association, as their students tend to have far higher debt levels, and their students have more debt, than students of other types of institutions.
(b) Access for low-income, minority, and older students (non-traditional students) will be cut off; and
(c) The Department does not have the statutory authority to enact this rule as proposed.

(a) It is claimed that students are making sound investments with high levels of debt, given their projected higher earnings over the lifetime of their careers. There are several problems with this argument:

i. First, although returns to education are usually based on returns per year of schooling ranging from 8 to 15 percent, it has never been shown—only assumed—that even the 8 percent rate of return applies to non-traditional, low-income, older graduates of for-profit programs. In a paper by Charles Rivers Associates commissioned by the Career College Association, it claimed that average returns on educational investment are 8 to 15 percent per year. However, this is an average rate that is based on studies of students with Associate's and Bachelor's degrees. There is no reason to believe that the 8 percent rate of return applies to graduates of for-profit, less than two-year programs, certificate programs, or specific programs. In other words, it is a stretch without empirical basis to claim that returns to a certificate program is the same as the average returns to Associate's and Bachelor's degrees. The purpose

of the rule-making is to find out exactly what the returns are to specific programs and certificates.

ii. Second, many of the people who attend for-profit institutions are mid-career and older students. Lifetime earnings calculations are based on the general student population, which tends to be much younger. Students of for-profit schools are generally older, and thus may not have the same return on education over their lifetime.

iii. Third, lifetime earnings should not be taken into account because it is unreasonable to ask individuals to be burdened by student debt over their lives; there should be a point where the student reaps the gains. There are many other things individuals may want to acquire that require lending—such as a car or home. It is unreasonable to suggest that their student debt burden be the primary debt burden they take over their lifetime.

It is, for these reasons elucidated above, questionable to expect returns to graduates of for-profit, less than two year programs to be the same as those of two and four year degrees without evidence, and to use returns over a lifetime as an indicator of program success.

(b) Critics allege that low-income, minority, and older students would lose access to federal student aid. This seems to be a misunderstanding—only *programs,* not students, will be cut off from funding. Students will still have access, but just at other programs (that are eligible), including other programs at for-profits.

(c) Critics cite section 134 of the Higher Education Act to claim that the Department of Education does not have the statutory authority to enact the rule as proposed. That section of the law reads:

> (a) PROHIBITION.—Except as described in subsection (b), nothing in this Act shall be construed to authorize the development, implementation, or maintenance of a Federal database of personally identifiable information on individuals receiving assistance under this Act, or otherwise involved in any studies or collections of data under this Act, including a student unit record system, an education bar code system, or any other system that tracks individual students over time.
>
> (b) EXCEPTION.—The provisions of subsection (a) shall not apply to a system (or a successor system) that—(1) is necessary for the operation of programs authorized by title II, IV, or VII; and (2) was in use by the Secretary, directly or through a contractor, as of the day before the date of enactment of the Higher Education Opportunity Act.
>
> (c) STATE DATABASES.—Nothing in this Act shall prohibit a State or a consortium of States from developing, implementing, or maintaining State-developed databases that track individuals over time, including student unit record systems that contain information related to enrollment, attendance, graduation and retention rates, student financial assistance, and graduate employment outcomes.

The Department of Education is not authorizing the development, implementation, or maintenance of a federal database of personally identifiable information. The Department is instead querying another database, either the Social Security Administration or other federal agency, for information and that agency is reporting back to the Department in the aggregate (see Figure 1 appended). The Department is proposing to obtain average annual earnings *by program* from another federal agency (using actual wage information maintained by that Federal agency for a program's individual students). As the proposed rule states, "to preserve the confidentiality of individuals… *neither the Department nor the institution will be able to review the wage information for specific program graduates*" (emphasis ours). In sum, the Department will neither create, develop, nor implement any database of personally identifiable information.

However, should the Department alter its current program and decide to maintain its own database—something that was not ever proposed by the Department in the proposed rule—it would be allowed to do so under subsection (b)(1), as it would be necessary for the operation of programs authorized by title IV. Therefore, we believe the claim that the Department lacks statutory authority to enact this rule without merit.

V. Other Data Is Important for the Department's Efforts to Properly Regulate Occupational Programs

As mentioned above (I(d)), one of the Department's stated goals is to regulate occupational programs because it wishes to ensure the value of credentials in the labor market and discourage oversupply. Using supplemental data would make the rule more effective in discouraging oversupply.

Oversupply in the labor market, as the Department observes, results in unemployment and a decline in real wages. The Department states explicitly that the proposed rule is meant to, among other things, discourage oversupply. However, the effect of bestowing the status of 'ineligible' or 'restricted' on a pre-existing program may not be sufficient to discourage oversupply.

For example: Program A is deemed an eligible program; that is, it has been empirically determined by the Department to be performing adequately. This may—in fact, should—have the effect of increasing enrollment in Program A. However, the local labor market demand for the occupation that Program A trains for is 40 individuals/year. Yet the program, due to its success as signaled by the Department, begins enrolling 100 individuals/year. Subsequently, it would be reasonable to expect that, over time, the success of Program A's graduates declines (as 60 out of the 100 are unemployed in field and can't meeting one of the metrics proposed), such that Program A then becomes restricted (and possibly ineligible). Program A has become a victim of its own success—that is, the program is sanctioned despite the fact that, for up to 40 students, it performs well on the Department's measures, but the enrollment for the program increased disproportionately to the demand in the labor market.

The Department then has two unintended problems: (1) it has unintentionally encouraged oversupply and the decline of value of certain credentials in the labor market, and (2) the Department is forced to sanction a good program—it remains good

as long as the enrollment of students is roughly equal to the demand of the labor market. In other words, a program will look ineffective even if it's not *at a certain capacity*.

The point is not to stop sanctioning programs. Rather, we recommend using additional data to improve program performance. We suggest that the proposed method can be improved upon to discourage, instead of encourage, oversupply. Determining demand for specific occupations and their educational requirements/credentials is possible, but it requires better alignment between job openings data, job projections, and educational demand projections. The Department should take into consideration short-term job projections and job openings data when deeming programs effective or ineffective, and not just employer letters. This data can supplement employer letters of program support by providing more accurate, empirical information about the demand for workers (which under the proposed rule is also required for new programs). Reliance on employer letters alone for demand estimates is a burden on employers and runs the risk of inaccuracy. While predicting the future is impossible, there are empirically sound ways to measure demand that are not simply hearsay. We urge the Department to consider using real time jobs openings data to assess ongoing and emerging demand. Real time job openings data provides information on the vast majority of job openings, their location by zip code, and the skills and education required. Using this data would go a long way to ensuring a more accurate picture of demand for eligible, sanctioned, and new programs, and help avoid the larger problems of oversupply.

General Observations

I. Proprietary institutions have strengths and weaknesses.

The rule-making will disproportionately affect proprietary institutions, because while this sector is a necessary component of higher education, it has consistently higher default rates than comparable institutions, its students take on more debt than comparable public programs, and its programs are more expensive. While these points should not be ignored, the rule-making should attempt to bolster the three main apparent strengths of the sector: (1) it serves older, minority, low-income, and harder-to-serve populations; (2) it provides students with flexibility not always found in the public sector; and (3) it provides added capacity to a system that is being stressed by increasing demand and limited public funding.

The for-profit sector has provided competition and an alternative educational model for traditional institutions of higher education. The strengths of the sector and the proprietary model can provide a path for greater access and more efficient postsecondary education and training. The proprietary sector should be more closely examined and its successes emulated in the wider higher education system.

II. The proposed rule is necessary to curb abuses in particular programs, but also signals the more general need for better information, outside of the regulatory process, linking postsecondary education and training with career pathways.

We agree that it is necessary to regulate and, where appropriate, sanction those programs that do not provide students with significant earnings returns in the labor market and that potentially harm the taxpayer through a higher rate of default.

The proposed rule will address abuses, but fall short of the system we need. The current abuses are the worst case examples that reflect a more general need for information systems, outside the regulatory process, that align postsecondary preparation and career opportunities.

The need for providing more effective information linkages between postsecondary education and labor markets stems from the changing economic role of postsecondary institutions. In fact, postsecondary education and training has gradually become the nation's workforce development system and is increasingly the arbiter of individual economic opportunity. In spite of its growing economic importance, our postsecondary education and training system and labor market information systems remain disconnected.

We urge both federal and state government authorities to view the context of the current rule-making as a signal that providing information systems linking postsecondary education and training programs with career pathways is desperately needed.

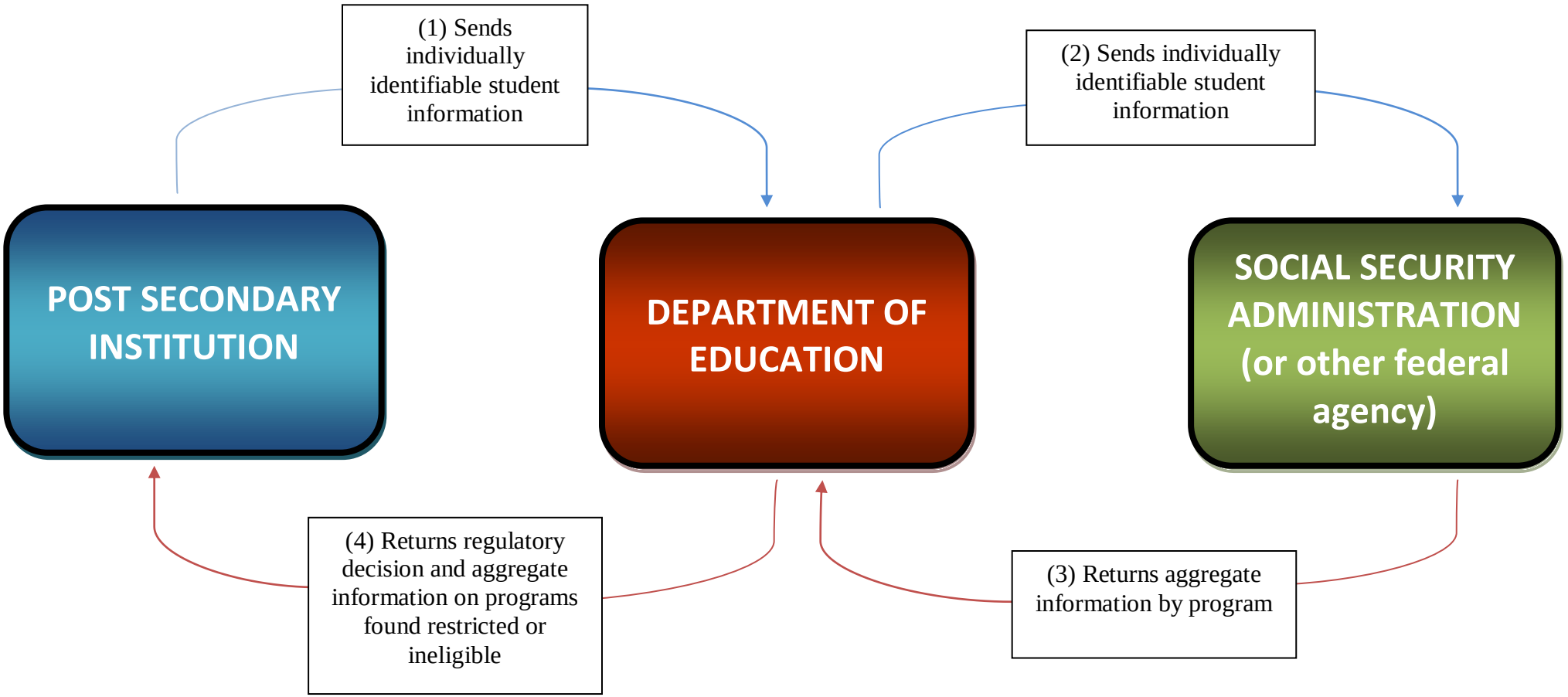
Ultimately, information helps postsecondary institutions launch and maintain effective programs and help individuals make informed decisions linking postsecondary programs to careers.

Good information systems that link education and careers will not eliminate, but would minimize the future need for aggressive federal oversight or expensive additional state-level regulation. Better information prevents failure and in this case an additional ounce of prevention is surely less onerous than another pound of the regulatory cure. Further, such information systems that connect postsecondary programs with labor markets represent a savings to the taxpayer, both in terms of cost of regulation and the cost of student loan default.

The development of such an information system need not, and probably should not, be housed in federal agencies. Section 134(c) of the Higher Education Act explicitly allows for a "State or a consortium of States" to develop, implement, and maintain "State-developed databases that track individuals over time, including student unit record systems that contain information related to enrollment, attendance, graduation and retention rates, student financial assistance, and *graduate employment outcomes*" (emphasis ours). But this doesn't mean that the federal government shouldn't encourage and assist the states in building such data systems. In the end, assisting with such data systems will lessen government's burden; access to good information will obviate the need for aggressive future regulation and oversight. In fact, the detailed component elements of such a system already exist—including wage records, transcript and program data, job openings data, and detailed information on occupational competencies.

In sum, we recommend that the Department of Education look beyond the rule-making process and consider additional measures beyond ad hoc, punitive options, to encourage more robust, data-driven systems which would serve institutions, students and taxpayers alike by providing crucial information on the real earnings and employment returns to occupational education and training.

FIGURE ONE: Information flow between federal agencies and postsecondary institutions



(1) Name of Students by Program; Social Security Numbers by Program; Completion date of Program by Student; Amount of Institutional aid and private loans by student
(2) Social Security Numbers by Program
(3) Median Wage Information by Program, with no individually identifiable information
(4) Regulatory Decision; Median debt-to-earnings ratio on programs found to be ineligible and restricted